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In re application of
J. Alfonso, et al.
Serial No. 09/527,291
Filed: March 17, 2000
For: PARTICLE FILLED RESINOUS PRODUCT OF
IMPROVED APPEARANCE

DECISION ON
PETITION

This is a response to the PETITION FOR RECONSIDERATION UNDER 37 C.F.R. § 1.181 TO WITHDRAW A HOLDING OF ABANDONMENT AND, ALTERNATIVELY, PETITION UNDER 37 C.F.R. § 1.137(b) TO REVIVE, filed March 18, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of June 17, 2003, for failure to timely file a proper response to the Office letter mailed October 15, 2002 be withdrawn. The petitioner asserts that the Office letter was not received by the applicants or applicant's representative.

DECISION

Since the petitioner asserts that the applicant did not receive the Office letter mailed October 15, 2002, the request is accepted as a petition under 37 C.F.R. § 1.181 (no fee) and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP § 711.02 - NEW PROCEDURE TMOG 1170 O.G. 114).

As set forth in MPEP § 711.03(c) II - PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION:

"The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement." (emphasis added)

The evidence presented by the petitioner fails to comply with the requirements set forth in MPEP § 711.03(c) II. The evidence fails to provide a statement by the petitioner that a search of the file jacket and docket records was made and indicates that the Office communication was not received, the petitioner has also failed to provide a copy of the docket records where the nonreceived Office communication would have been entered had it been received and docketed.

A review of the application file reveals an Office letter was mailed on October 15, 2002 but it contained an incorrect mailing address (624 Ninth Street NW; Suite NW; Washington, DC 20001).

Therefore, even though the petitioner has failed to provide a statement that a search of the file jacket and docket records indicates that the Office communication was not received along with a copy of the docket records where the nonreceived Office communication would have been entered had it been received and docketed, such requirement is waived in view of the fact that the application file record reveals that the Office letter mailed October 15, 2002 was mailed to the incorrect address.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the Office letter originally mailed October 15, 2002 to the address of record in the application file and restarting of the statutory period of response from the mail date thereof.

The Petition is **GRANTED**.



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